IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8525 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BGH EXIM LTD TROUGH GYANCHAND SINGHVI

Versus

STATE OF GUJARAT

Appearance:

MR HRIDAY BUCH for Petitioner No. 1

MISS NANDINI JOSHI, AGP, for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/10/2004

ORAL JUDGEMENT

1. By way of this petition the petitioner has challenged the order of the District Collector, Bharuch, dated 30th June 2004, whereby the District Collector has passed an order of confiscation of the goods of the petitioner firm.

2. The petitioner is engaged in the business of trading including importation and sale of various products including SKO, Furnace Oil, Naphtha, Timber, etc.

3. The petitioner preferred Special Civil Application No.17706/03 challenging the procedure laid down by the Sales Tax Authorities in the State of Gujarat who issued general stop delivery instructions directly to the Port Officials without intimation or notice to the importers and without any satisfaction. According to the petitioner, for release of such goods a cumbersome procedure has to be followed wherein certain irrelevant and extraneous documents and information is sought. An additional condition requiring deposit of a cheque for the total amount of Sales Tax leviable on such consignment on a hypothetical basis that the same would be entirely sold within Gujarat is also imposed. The aforesaid petition is pending for final hearing and this Court while admitting the matter on 4th March 2004, has directed the respondent authority to make a detailed inquiry with regard to the contentions raised by the petitioner in the said petition and submit a report.

4. The petitioner was having a stock of 747.946 MTs lying in the tank having the capacity of 10500 MTs at GCPTCL Port, Dahej. The said stock was detained and the petitioner moved Civil Application No.978/04 for release of the said stock. The Division Bench of this Court directed to release the said stock.

5. According to the petitioner, thereafter the respondent authorities initiated proceedings against the petitioner. Though the order was passed in the presence of the officers of the Sales Tax Authorities, the goods were not released till 10.30 pm on 19th February 2004. However, within few hours i.e. at 2.00 am on the very night of 19th February 2004 the very stock of the petitioner has been seized by the respondents alleging breach of the provisions of the Order without any prior inquiry or intimation. Again the petitioner challenged the said seizure by way of draft amendment in the aforesaid petition and this Court directed the release of the detained stock. After giving bank guarantee to the tune of Rs.17,50,000/- as directed by this Court the stock was released by the authorities. This Court had also directed the respondents to initiate inquiry and complete the same on or before 30th June 2004. Therefore, the inquiries came to be initiated by the respondent no2. for the alleged breach of the provisions of the Order.

6. The respondent no.3 issued a notice dated 24th March 2004 and started proceedings against the petitioner. Ultimately the impugned order has been passed which is challenged in this petition.

7. The main contention raised by the petitioner is that no show-cause notice as prescribed under Section 6-B of the Act has been served upon the petitioner. Therefore the impugned order was passed contrary to the statutory provisions and therefore the impugned order requires to be quashed and set aside. The petitioner has also contended that the impugned order has been passed in violation of principles of natural justice inasmuch as the documents relied upon by the respondent no.2 while passing the impugned order such as letter of District Supplies Officer dated 20th February 2004, letter dated 30th June 2004 have not been supplied to the petitioner.

8. In this connection it is relevant to note section 6-B of the Essential Commodities Act, 1955 which reads as under:

"6-B. Issue of show-cause notice before confiscation of essential commodity: - (1) No order confiscating any essential commodity shall be made under sec.6-A unless the owner of such essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance or the person from whom it is seized -

(a) is given a notice in writing informing him on the grounds on which it is proposed to confiscate the essential commodity package, covering receptacle, animal, vehicle, vessel or other conveyance;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under sec.6-A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in

carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(3) No order confiscating any essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice given under CL. (a) of sub-section (1), if in giving such notice, the provisions of that clause have been substantially complied with."

9. In this context the reply of the respondent is that the petitioner has not complied with all the instructions of the Collector, Bharuch and that the petitioner was issued notice on 2.4.2004 and another notice was issued on 9.6.2004 and again a notice on 22.6.2004. However, the fact remains that the respondent has not issued show-cause notice before confiscation of essential commodity under section 6-B of the Act. Learned counsel for the respondent is unable to dispute this fact. A perusal of section 6-B of the Act makes it clear that the issuance of show-cause notice under section 6-B is mandatory. Since no such notice has been issued, the petition requires to be allowed only on that ground.

10. In the premises aforesaid, the petition is allowed. The order at Annexure-A is quashed and set aside. It is made clear that the order at Annexure-A has been quashed only on the ground that the Collector has not followed the mandatory requirement under the provisions of section 6-B of the Act and it will be open for the competent authority to take appropriate steps against the petitioner after following the mandatory provisions of the Act subject to the orders that may be passed by the Division Bench in the pending petition. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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